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## Monitoring and Evaluation of International Counter-Trafficking Programs: Definitions, Challenges, and a Way Forward

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## MONITORING AND EVALUATION OF INTERNATIONAL COUNTER-TRAFFICKING PROGRAMS: DEFINITIONS, CHALLENGES, AND A WAY FORWARD

By Norman L. Greene\*

*On the face of it, demanding results from aid programs...would seem to be as American as motherhood and apple pie. Who could dispute such a proposition?*<sup>1</sup>

### AUTHOR'S NOTE

Each panel is a declaratory statement, an exclamation, an interrogatory, or a combination of all of them.<sup>2</sup> A counter-trafficking panel is always a combination, because of the urgency of counter-trafficking, because of the difficulty of eliminating trafficking and its effects, and because of the need to lay out, once again, the story. To the extent the story has been told before (in whole or in part), the author refers the reader to Professor Angus Deaton's observation in a different context: "This is a story that has been told many times but I want to tell it in a new way."<sup>3</sup>

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\* Copyright © Norman L. Greene (2015). Mr. Greene has previously written on, among other things, international democracy promotion and rule of law reform, capital punishment, judicial independence, and counter-trafficking. His articles include *Perspectives from the Study of International Development and the Rule of Law: Are There Lessons for the Reform of Judicial Selection in the United States?*, 86 DENV. U. L. REV. 53 (2008); and *Rule of Law in Morocco: A Journey Towards a Better Judiciary Through the Implementation of the 2011 Constitutional Reforms*, 18 ILSA J. INT'L & COMP. L. 455 (2012). He has engaged in various anti-trafficking activities as a New York Uniform Law Commissioner and a member of the Prevention of and Remedies for Human Trafficking drafting committee which prepared a proposed uniform state law and was a member of the New York City Mayor's Office Working Group on Human Exploitation (established under Mayor Michael R. Bloomberg). He is a member of the New York firm of Schoeman Updike Kaufman & Stern LLP.

The author gratefully acknowledges the exceptional work of the St. John's Journal of International and Comparative Law under editors-in-chief John Coster and Ashlee Aguiar in the editing of this article; of Priyanka Mukerjee, as the Journal's symposium editor, with whom the author closely collaborated in conceiving, defining and paneling the March 28, 2014 symposium which is the subject of this article; and of Loren Wissner Greene in reviewing drafts of this article. He further acknowledges the outstanding work of panel moderator Veronica Zeitlin and her co-panelists Vanessa Bouché, Marisa Ferri, and Ruchira Gupta at the symposium, for elevating the symposium by their very presence, and for their collective leadership in the cause of international counter-trafficking.

Many references for this article have been taken from the documentation for Norman L. Greene and Eric Beinhart, *Combating Human Trafficking -- The U.S. Government's Response: A Panel and A Perspective on Counter-Trafficking in Persons*, 20 ILSA J. OF INTERN & COMP. L. 49 (2013).

<sup>1</sup> Andrew Natsios, *The Clash of the Counter-bureaucracy and Development*, Center for Global Development 28 (2010), [http://www.cgdev.org/files/1424271\\_file\\_Natsios\\_Counterbureaucracy.pdf](http://www.cgdev.org/files/1424271_file_Natsios_Counterbureaucracy.pdf).

<sup>2</sup> References to a speaker's quotation refers to the transcript of the event on file with the St. John's Journal of International and Comparative Law. [hereinafter JICL Tr.].

<sup>3</sup> ANGUS DEATON, *THE GREAT ESCAPE: HEALTH, WEALTH, AND THE ORIGINS OF INEQUALITY*, at xiii (2013). Professor Deaton was awarded the 2015 Nobel Prize in economics for his analysis of consumption, poverty and welfare. See [http://www.nobelprize.org/nobel\\_prizes/economic-sciences/laureates/2015/press.html](http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2015/press.html).

# MONITORING AND EVALUATION OF INTERNATIONAL COUNTER-TRAFFICKING PROGRAMS: DEFINITIONS, CHALLENGES, AND A WAY FORWARD

## INTRODUCTION

The subject of this article, the monitoring and evaluation of counter-trafficking programs, is how to measure results – and what one does in terms of such programming when one can or cannot readily measure them. It affects the lives, liberty and well-being of millions; touches on the expenditure of millions of dollars in foreign assistance funds; and is essential to the counter-trafficking and overall effective foreign assistance discussion.

In a panel moderated by USAID's Veronica Zeitlin, which included Prof. Vanessa Bouché, the State Department's Marisa Ferri, and Apne Aap's Ruchira Gupta,<sup>4</sup> the panelists addressed the nature of monitoring and evaluation needed for (or at least associated with) counter-trafficking; explained some of the challenges faced in doing this work; and considered the implications for counter-trafficking policy. The panel took place at St. John's University School of Law's Manhattan Campus on March 28, 2014.<sup>5</sup> The author and Priyanka Mukerjee co-chaired the event as part of the *St. John's Journal of International and Comparative Law's* annual symposium, entitled *The Challenges of International Human Trafficking*.

This article highlights many of the issues from the panel and supplements them with extensive references for research context. Some of the issues raised involve complex challenges; rather than seek to resolve them, this article seeks (as did the panel) to pave the way toward further research and exploration.

### I. WHY MONITOR AND EVALUATE COUNTER-TRAFFICKING (OR ANY) PROGRAMS?

As panelists observed, monitoring and evaluation can be important ways to determine whether counter-trafficking programs are working effectively and whether donors, taxpayers, and recipients or program beneficiaries are receiving their money's worth from programs.<sup>6</sup>

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<sup>4</sup> Biographical material on each panelist is appended to this article. Each panelist was speaking on her own behalf, and their remarks should not be attributed to the organizations with which they are affiliated.

<sup>5</sup> The questions sought to be addressed at the panel included the following:

- What is an impact evaluation? Why is it important?
- Government reports have observed how difficult it is to evaluate counter-trafficking programs for impact. Can counter-trafficking programs be evaluated for impact in any event and if so how?
- If the nature of human trafficking makes customary evaluation techniques difficult (or impossible), or for some reason such evaluations cannot be done or done within a reasonable time or cost, what are the implications for counter-trafficking programs? Participate without evidence-based evaluations? Trial and error?
- For many years, programs were carried on without impact evaluations. If there are no such evaluations, how should a government policymaker proceed? Best judgment based on experience?

<sup>6</sup> Cf. Natsios, *supra* note 1, at 40 ("the reason for most of these process and measurement requirements is the suspicion by Washington policy makers and the counter-bureaucracy that foreign aid does not work, wastes taxpayer money, or is mismanaged and misdirected by field missions"). The counter-bureaucracy referenced in the Natsios

Panelist Ruchira Gupta emphasized the need to be accountable to the persons most vulnerable to trafficking, the importance of selecting what to monitor and evaluate, and the potential of monitoring and evaluation to increase program effectiveness.

In many governmental and non-governmental undertakings, one must justify one's actions by whether the result was worth the investment, not just in counter-trafficking. One may be generally held accountable for what one does in many enterprises. But it is one thing to announce the importance of monitoring and evaluation and still another to get them done within a reasonable time and cost, and without unduly shifting resources from other counter-trafficking efforts. (Although not the subject of the panel, recent commentary suggests that excessive compliance activities may also hamper development through over-regulation.<sup>7</sup>)

## II. GENERAL TYPES OF EVALUATIONS

In response to Ms. Zeitlin's opening request for definitions, Prof. Vanessa Bouché discussed the elements of evaluations in terms of identifying "impacts," "outputs," and "outcomes." She pointed out that "impact" evaluations are considered the highest form of evaluations: with these evaluations, one can "evaluate a program based on its cause and effect, in other words, you have an intervention, and you expect something to happen due to that intervention."<sup>8</sup> "[T]hose types of cause-and-effect programs...are considered the gold standard and are also called impact evaluations."<sup>9</sup>

Impact evaluations are not the only useful types of evaluation, however:

I think that most of the time in this realm when you talk about evaluation, we automatically, our clients automatically go to this

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article is designed to "monitor and improve the performance of other government agencies" and consists, among other things, of the Offices of the Inspectors General (OIG), Management and Budget (OMB), Government Accountability Office (GAO), Director of Foreign Assistance (F) in the State Department and more. *Id.* at 13-14.

<sup>7</sup> See generally Natsios, *supra* note 1.

<sup>8</sup> JICL Tr. 35, Bouché. See SENIOR POLICY OPERATING GROUP GRANTMAKING COMM., *Promising Practices: A REVIEW OF U.S. GOV'T-FUNDED ANTI-TRAFFICKING IN PERSONS PROGRAMS 3* (2012), [http://pdf.usaid.gov/pdf\\_docs/PDACU465.pdf](http://pdf.usaid.gov/pdf_docs/PDACU465.pdf) [hereinafter *Promising Practices*] (stating as follows:

Determining evidence-based practices among anti-trafficking programs is challenging. Impact evaluations help establish whether or not there is a causal link between a program or intervention and a set of outcomes; however, performing high-quality impact evaluations requires a significant amount of time, resources, and technical expertise that many counter-trafficking organizations lack. Moreover, impact evaluations should be conducted by independent, outside evaluators. External evaluators' independence and impartiality make findings more credible, as well as reduce biases and conflicts of interests. Given scarce resources, many program implementers and donors are not in a position to divert resources away from direct services for victims of trafficking in order to conduct formal program evaluation).

<sup>9</sup> JICL Tr. 36, Bouché. The reference to "gold standard" as a description of a presumed standard of excellence should not obscure the complexity and controversy which may be associated with any type of evaluation in any given context. As with any standard, it must be itself be evaluated for reasonableness and appropriateness, and there was no suggestion at the panel that the use of impact evaluations in counter-trafficking should not be questioned.

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impact evaluation where you have your treatment group and your control group. But there are many, many other ways to evaluate not causality but correlation.<sup>10</sup>

Similarly, according to a development commentator, writing on a blog for NYU's Development Research Institute, impact evaluation "is a tool for identifying worthwhile development efforts, but it is not the only tool. We can't go back to assuming that good intentions lead to good results, but there must be room for judgment and experience in with the quantifiable data."<sup>11</sup>

Counter-trafficking programs are diverse, and different programs with different ends may be susceptible to different evaluative techniques. Thus a program targeted at protection of trafficking victims might be evaluated differently from one concerning prevention of trafficking and another from prosecuting traffickers:

Breaking it down in that way really helps establish some sort of framework because it's overwhelming to think of how you evaluate human trafficking programs all over the globe. You just get paralyzed by that thought but breaking it down by those three [P's, namely, protection, prevention and prosecution] is helpful, especially because prevention programs are very different from protection programs, which are very different from prosecution programs.<sup>12</sup>

### III. SPECIAL PROBLEMS OF COUNTER-TRAFFICKING EVALUATIONS AND POTENTIAL UNINTENDED CONSEQUENCES

Focusing on the model of impact evaluations known as randomized controlled trials, a panelist found such trials (even if applicable to counter-trafficking programs, a matter of some doubt) could pose ethical problems for counter-trafficking.<sup>13</sup> May one ethically establish a

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<sup>10</sup> JICL Tr. 53, Bouché.

<sup>11</sup> See Alanna Shaikh, *Is Impact Measurement a Dead End*, DEVELOPMENT RESEARCH INST. (July 20, 2010), <http://aidwatchers.com/2010/07/is-impact-measurement-a-dead-end/>.

<sup>12</sup> JICL Tr. 53, Bouché.

<sup>13</sup> The author has detected skepticism (if not outright rejection) of the possibility that randomized controlled trials can even be used in counter-trafficking programs through informal interviews conducted with the goal of seeking an expert in the field for this symposium in 2013-2014.

For further research on randomized controlled trials generally, see below: One common type of impact evaluation is a randomized evaluation. "A Randomized Evaluation is a type of Impact Evaluation that uses random assignment to allocate resources, run programs, or apply policies as part of the study design. Like all *impact evaluations*, the main purpose of randomized evaluations is to determine whether a program has an impact, and more specifically, to quantify *how large* that impact is." *Methodology Overview*, ABDUL LATIF JAMEEL POVERTY ACTION LAB, <http://www.povertyactionlab.org/methodology> (emphasis in original). See also, *id.* ("Impact evaluations measure program effectiveness typically by comparing outcomes of those (individuals, communities, schools, etc.) who received the program against those who did not. There are many methods of doing this, but randomized evaluations are generally considered the most rigorous and, all else equal, produce the most accurate, i.e. unbiased, results"); see also ABHIJIT V. BANERJEE & ESTHER DUFLO, POOR ECONOMICS: A RADICAL RETHINKING OF THE WAY TO FIGHT GLOBAL POVERTY 14 (2011) ("In an RCT...individuals or communities are randomly assigned to different 'treatments'—different programs or different versions of the same program. Since

control group – a sample population of trafficking victims or persons vulnerable to trafficking without exposure to the intervention being tested, if the intervention is perceived to be effective? Couldn't that potentially expose the control group to gratuitous harm? According to the panelist, it could be doing precisely that:

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the individuals assigned to different treatments are exactly comparable because they were chosen at random, any difference between them is the effect of the treatment"); *see also* Esther Duflo, Rachel Glennerster, & Michael Kremer, *Using Randomization In Development Economics Research: A Toolkit 5* (National Bureau of Economic Research, Technical Working Paper, Paper No. 333, 2006), <http://www.nber.org/papers/t0333> (stating that any attempt at drawing a causal inference question such as "[w]hat is the causal effect of education on fertility?" or "[w]hat is the causal effect of class size on learning?" requires answering essentially counterfactual questions: How would individuals who participated in a program have fared in the absence of the program? How would those who were not exposed to the program have fared in the presence of the program?").

For a critique of the use of randomized controlled trials in foreign aid generally, *see* Deaton, *supra* note 3, at 290-1 ("These arguments have led to a movement toward more careful evaluation, often with an emphasis on randomized controlled trials as the best way of finding out whether a given project worked and, beyond that, of finding out 'what works' in general...According to this view, aid has been much less effective than it would have been had past projects been seriously evaluated.... Finding out whether a *given* project was or was not successful is important in itself but unlikely to reveal anything very useful about what works or does not work *in general*....More seriously, there is no reason to suppose what works in one place will work somewhere else") (Emphasis in original). *Cf. Evaluation of development programmes*, OECD, available at <http://www.oecd.org/dac/evaluation/> and <http://www.oecd.org/dac/evaluation/understandingtheroleofevaluationindevelopmentprogrammes.htm> ("Robust, independent evaluation of development programmes provides information about what works, what does not and why. This learning contributes to improving the development effectiveness of aid and helps hold donors and partner country governments accountable for results").

Prof. Deaton's book in its final chapter raises wide-ranging challenges to the effectiveness of certain forms of U.S. and international foreign assistance programming overall as currently practiced in achieving its stated goals, without challenging those goals themselves, such as alleviating global poverty and increasing prosperity. Although principally relevant here, his comments on foreign assistance are not the focus of his overall work and occupy only a limited part of his book. Since addressing as opposed to noting his critiques is beyond the scope of the symposium and this article, this article refers the reader to selected reviews of Prof. Deaton's book. *See e.g.*, Richard Fuentes, *The Great Escape, Angus Deaton's big new book: Brilliant on Inequality and politics, but wrong on aid*, OXFAM, Mar. 4, 2004, available at <http://oxfamblogs.org/fp2p/the-great-escape-angus-deatons-big-new-book-brilliant-on-inequality-and-politics-but-wrong-on-aid/>; Bill Gates, *The Great Escape is an Excellent Book with One Big Flaw*, GATESNOTES, Apr. 8, 2014, available at <http://www.gatesnotes.com/Books/Great-Escape-An-Excellent-Book-With-One-Big-Flaw> (last visited Aug. 25, 2015) ("[T]he seventh and final chapter takes a strange turn: Deaton launches a sudden attack on foreign aid. It's by far the weakest part of the book; if this is the only thing you read about aid, you will come away very confused about what aid does for people"); *see also* Fred Andrews, *A Surprising Case Against Foreign Aid*, NEW YORK TIMES, Oct. 12, 2013, [http://www.nytimes.com/2013/10/13/business/a-surprising-case-against-foreign-aid.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/10/13/business/a-surprising-case-against-foreign-aid.html?pagewanted=all&_r=0). ("The professor's maverick views fly in the face of an enormous global effort, and he paints with a very broad brush. The World Bank counts nearly 12,000 projects under way in 172 countries. It's hard to believe that all are nearly as flawed or misguided as Professor Deaton suggests. Aid is not a door that should slam shut"). Knowledge of the competing theories of the "effective foreign assistance" debate is essential to participate in the policy discourse, even though one is not yet prepared to take sides.

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Do you really want to withhold a program that you think can probably prevent someone from being trafficked, just so that you can determine causality of that PSA [public service announcement] or whatever the case may be on preventing your population from being trafficked? Probably not. You would rather just spend the money...and risk that the program is only going to have marginal effects, than to withhold it from a group that you know could benefit from it.<sup>14</sup>

In a theme picked up throughout the panel (and the literature), it was observed that conducting evaluations may pose special difficulties in counter-trafficking. For example, collecting data on the effectiveness of counter-trafficking projects is especially difficult because of the hidden nature of the crime and trafficking victims and the absence of “baseline data on the nature and extent of human trafficking.”<sup>15</sup> Trafficking victims may be difficult to track and may not identify themselves as such.

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<sup>14</sup> JICL Tr. 47, Bouché.

<sup>15</sup> See *Promising Practices*, *supra* note 8. The challenges of determining evidence-based practices are further compounded by the inherent difficulties of working with “hard-to-reach” or “hidden” populations. See also U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-07-1034, HUMAN TRAFFICKING: MONITORING AND EVALUATION OF INT’L PROJECTS ARE LIMITED, BUT EXPERTS SUGGEST IMPROVEMENTS 21 (2007), available at [http://pdf.usaid.gov/pdf\\_docs/Pcaab621.pdf](http://pdf.usaid.gov/pdf_docs/Pcaab621.pdf) (last visited Aug. 25, 2015) [hereinafter GAO REPORT] (referencing problems of evaluating impact of counter-trafficking projects). According to the GAO REPORT, for various reasons, baseline data on the nature and extent of human trafficking against which to measure future change or program achievements remain largely unavailable. *Id.* at 18, 20–21. Such reasons include confidentiality and security concerns, which may make service providers unwilling to share certain victim data since disclosure may affect victim safety. *Id.* at 21; see also *id.* app. VI, at 57 (USAID Comments dated July 16, 2007) (“The well-being of victims must be of primary concern in designing control group evaluations as it is in designing anti-trafficking interventions”). The comments from USAID also note that evaluation standards need to be “adapted to fit the context of anti-trafficking activities.” *Id.* app. VI, at 56. In addition, “[d]eveloping countries, which are typically the countries of origin, have limited capacity for data collection.” *Id.* at 22. “Without estimates of the scope of human trafficking to use as baselines in project locations, it is very difficult to determine where interventions are most needed or where interventions would have the greatest impact.” *Id.* at 21. “Because of the difficulties in evaluating anti-trafficking projects, the few evaluations that have been completed are qualitative rather than quantitative, focus on process rather than impact, and rarely trace victims over time.” *Id.* at 23; see also *id.* (referencing qualitative evaluations “consisting of document reviews, site visits, interviews and focus groups with stakeholders”); *id.* at 28 (“[F]ew impact evaluations have been completed due to the difficulties involved. As a result, little is known about the impact of anti-trafficking interventions”).

Although the terms monitoring and evaluation are often used together, the Department of State’s comments on the GAO REPORT distinguish between monitoring and evaluation as follows:

Project monitoring involves the ongoing assessment of grant activities to ensure that the terms and conditions of the grant are being met, objectives accomplished, and federal funds are spent responsibly. Program evaluation involves the assessment of a project’s short-term and long-term impact, which entails a systematic and comprehensive analysis of activities and outcomes.

The 2012 USAID Counter-Trafficking in Persons Policy ("2012 USAID Policy") also acknowledges the problem of insufficiency of evaluation and data itself for evaluative purposes and commits USAID to doing better.<sup>16</sup>

To date, the field of C-TIP [Combating Trafficking in Persons] has not been driven by robust monitoring and evaluation; we lack systematic, empirical data and evaluation of counter-trafficking interventions globally. Likewise, Agency support to combat trafficking has generally not been structured to measure the impact of our investments. . . . Going forward, USAID Missions investing in C-TIP...will apply rigorous methods to measure impact.<sup>17</sup>

A panelist also mentioned the difficulty in assessing programs if and when it was necessary to go back to interview a former trafficking victim about her life after her trafficking has ended, perhaps just when the victim was prepared to go on with her life and the memory of her trafficking was painful. Such an effort in itself may have an unintended negative consequence.

#### IV. THE MOMENTUM BEHIND IMPROVED EVALUATIONS

It was suggested to the panel that in the past projects might more or less have been "done" without seeking evidence of impacts, at least to the extent

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*Id.* app. IV, at 44 (U.S. State Department Comments dated July 13, 2007).

<sup>16</sup> The Preface to the 2012 USAID Policy observes:

By applying rigorous methods to measure our impact, we can help establish a foundation of systematic empirical data that will inform evaluations and improve our efforts. We will also use the evaluations to refine and focus our programming, prioritizing countries of global strategic importance with high rates of trafficking and countries at greatest risk.

2012 USAID Policy, at v, available at [http://pdf.usaid.gov/pdf\\_docs/Pdact111.pdf](http://pdf.usaid.gov/pdf_docs/Pdact111.pdf). Cf. DEATON, *supra* note 3 at 313 ("Defenders of aid will often concede at least some of the arguments against it but then go on to argue that while past aid has not been effective, and has sometimes done harm, we can (and must) do better in the future. They believe that aid can be smarter and more effective, and that it can be given in a way that avoids the pitfalls.")

The 2012 USAID Policy was the subject of a report of the USAID Inspector General, *Review of USAID's New Counter-Trafficking in Persons Program* (Report No. 9-000-14-001-S), Nov. 27, 2013, available at <https://oig.usaid.gov/sites/default/files/audit-reports/9-000-14-001-s.pdf>. See *id.* at 2 ("The USAID Office of Inspector General (OIG) conducted this review to determine if the Agency's new C-TIP policy provides an appropriate framework to effectively counter TIP.") (*Inspector General Report*)

<sup>17</sup> 2012 USAID Policy, *supra* note 16, at 5–6; see also 2012 USAID COUNTER-TRAFFICKING IN PERSONS FIELD GUIDE at 22, available at [http://www.usaid.gov/sites/default/files/documents/2496/C-TIP\\_Field\\_Guide\\_Final\\_April%205%202013.pdf](http://www.usaid.gov/sites/default/files/documents/2496/C-TIP_Field_Guide_Final_April%205%202013.pdf). ("The majority of numbers currently reported on trafficking are not derived using rigorous research methodology. Trafficking, both the victims and the perpetrators, belong to a sector of society that is difficult to track and even more difficult to quantify."); cf. DEAN KARLAN & JACOB APPEL, MORE THAN GOOD INTENTIONS: IMPROVING THE WAYS THE WORLD'S POOR BORROW, SAVE, FARM, LEARN, AND STAY HEALTHY (Penguin Group USA 2011) at 30 (without reference to trafficking, noting the problem of poor evaluations in general, focusing on "before-after evaluations" as follows: "I consider it unethical to measure impact so badly that it really does not tell you anything. That just wastes money that could have gone to better uses.").



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recommended today.<sup>18</sup> A follow-up observation was whether the emphasis on evaluations in counter-trafficking might be a fad. As one panelist observed, “nobody was talking about [counter-trafficking] evaluation five years ago and now everybody's talking about it.”<sup>19</sup> But “I don't think that it's necessarily a fad though it is new and sort of the buzz words that people are talking about.”<sup>20</sup> Monitoring and evaluation is important to satisfy one's stakeholders and to ensure one is creating the best programs.<sup>21</sup> Attempts to evaluate are a positive trend, and despite the challenges in providing effective evaluations, interest in evaluations is here to stay.<sup>22</sup>

### V. EVALUATION CHALLENGES: RESOURCES AND PRIORITIES

Unresolved by the panel was what to do about the cost of evaluations. Good evaluations require professionals and can be expensive. They also have the potential to divert resources from other programs. There is, therefore, a cost-benefit analysis to consider in undertaking evaluations.<sup>23</sup>

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<sup>18</sup> To determine the historical extent of evaluation discussion in United States foreign assistance is beyond the scope of this program. Such discussions have nonetheless been going on for years in the field of foreign assistance in different contexts. *See generally* Natsios, *supra* note 1.

<sup>19</sup> JICL Tr. 48, Bouché.

<sup>20</sup> *Id.* The author notes that counter-trafficking is just one of many contexts in which greater evaluations are sought.

<sup>21</sup> Prof. Bouché noted that “[y]ou're accountable to your funders to make sure that the programs that you're doing are working but also to the populations that you're serving in a sense that you want to be able to serve them in the best way possible: and monitoring and evaluation “helps you to continue to create programs” and “helps you know what's working and what's not so that you stop spending money and time and valuable resources...in areas which are not having great impact and then being able to apply all those same resources to programs that you know are having a good impact.” (JICL Tr. 48-9, Bouché).

<sup>22</sup> Beyond the scope of the panel is the subject of excessive regulation, and the panel did not fully address it. Nonetheless whether any given regulation or set of regulations is counter-productive is a fair ground for debate. *See* Natsios, *supra* note 1, at 15 (“The demands of the counter-bureaucracy are now so powerful that they beg the question: Who or what is regulating the regulators? More important for our purposes, the question is whether the counter-bureaucracy has become counterdevelopmental. Are the demands of this system now constraining development...”). *See also* *The Politics of Results and Evidence in International Development: important new book*, OXFAM BLOGS, available at <http://oxfamblogs.org/fp2p/the-politics-of-results-and-evidence-in-international-development-book-review/> (book review) (“The results/value for money steamroller grinds on, with aid donors demanding more attention to measurement of impact. At first sight that's a good thing – who could be against achieving results and knowing whether you've achieved them, right? Step forward Ros Eyben, Chris Roche, Irene Guijt and Cathy Shutt, who take a more sceptical [sic] look in a new book, *The Politics of Results and Evidence in International Development*, with a rather Delphic subtitle – ‘playing the game to change the rules?’”).

<sup>23</sup> *See also* Natsios, *supra* note 1, at 36:

Third, oversight and accountability are not free. More staff must be hired...to account for every dollar spent, to measure everything, to comply with voluminous federal regulatory law...and ensure “results, results, results.” This means higher and higher overhead costs imposed by the counter-bureaucracy and congressional staffs on USAID contracts and grants. The odd notion that all of this complex web of compliance can be done with no overhead costs is usually argued by people who have never run anything and are completely oblivious to the reality of program management in poor countries. In addition, the emphasis on oversight has tended to crowd out the smaller companies which are not fully equipped to master federal regulation.

The presentations on the challenges of evaluation were consistent with the U.S. Government report *Promising Practices: A Review of U.S. Gov't-Funded Anti-Trafficking in Persons Programs* and other documents. The report noted the desirability of evaluation which would involve “methodologically-sound research demonstrating that [such programs are] effective and worthy of application on a large scale.”<sup>24</sup> But according to *Promising Practices*, counter-trafficking evaluation is difficult for various reasons, including the scarcity of resources for this purpose: “[P]erforming high-quality impact evaluations requires a significant amount of time, resources, and technical expertise that many counter-trafficking organizations lack.”<sup>25</sup> *Promising Practices* adds that evaluations should be independent and impartial in order to lend credibility to the findings.<sup>26</sup>

The need for improved evaluations for foreign assistance programs is a theme of other publications or policy statements besides *Promising Practices* and the 2012 USAID Policy.<sup>27</sup>

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*See* Natsios, *supra* note 1, at 34-5 (“This practice has restricted newer, smaller, and local organizations from competing for grants and contracts, because these organizations lack the business systems to follow U.S. federal law and regulation, to account properly for all funds, to disburse money quickly, and to produce measurable and auditable results.”).

<sup>24</sup> *See Promising Practices, supra* note 8. *Promising Practices* highlights the problem of determining which counter-trafficking practices are effective or ineffective:

Since 2010, the SPOG Grantmaking Committee has focused significant attention on developing a strategy for supporting a shift towards evidence-based programming among United States government agencies to build the knowledge base on human trafficking and propose solutions to enhance anti-trafficking activities. The term “evidence-based practice” refers to any intervention that can be sourced back to methodologically-sound research demonstrating that it is effective and worthy of application on a large scale. At the present time, the knowledge base on effective anti-TIP programming is limited. Most U.S. government agencies, however, have made significant progress in supporting research and evaluation of anti-trafficking activities. While the *promising practices* collected in this document correlate with positive results, there is not sufficient evaluation data to definitively demonstrate a causal link between the practice and positive outcomes.

*Id.* at 3 (italics in original). For a description of the Senior Policy Operating Group, *see id.* (“Established in 2003, the Senior Policy Operating Group (SPOG) to Monitor and Combat Trafficking in Persons coordinates interagency policy, grants, research, and planning issues involving international and domestic trafficking in persons and the implementation of the Trafficking Victims Protection Act.”). *Promising Practices* identified fifteen counter-trafficking projects funded by various agencies of the U.S. Government, such as the ILO (Central America and the Dominican Republic—Department of Labor-funded), IJM (Philippines—Department of State TIP office-funded), and ABA projects (Nigeria—USAID funded); *see id.* at 14, 16, 18. The list was referenced in the report as “by no means exhaustive,” but rather as an “important starting point upon which to build a more comprehensive learning resource.” *Id.* at 3.

<sup>25</sup> *See Promising Practices, supra* note 8, at 3. *See also Inspector General Report, supra* note 16 (“Center staff said that C-TIP impact evaluations were time-consuming, costly, and challenging to design and that center staff were beginning an evaluation in 2014.”)

<sup>26</sup> *See Promising Practices, supra* note 8, at 3.

<sup>27</sup> *See, e.g.,* DEATON, *supra* note 3 at 290 *et seq.* (commenting on a movement seeking better evaluations); Marian Leonardo Lawson, *Does Foreign Aid Work? Efforts to Evaluate U.S. Foreign Assistance*, available at <http://www.fas.org/sgp/crs/row/R42827.pdf> (2013), Summary (1<sup>st</sup> physical page) (“In most cases, the success or

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failure of U.S. foreign aid programs is not entirely clear, in part because historically, most aid programs have not been evaluated for the purpose of determining their actual impact.”)

For an example of USAID policy statements on the importance of project evaluations in democracy, human rights, and governance overall, *see e.g.*, U.S. AGENCY INT’L DEV., USAID STRATEGY ON DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE, at 34 (2013), *available at* [http://www.usaid.gov/sites/default/files/documents/1866/USAID%20DRG\\_%20final%20final%206-24%203%20\(1\).pdf](http://www.usaid.gov/sites/default/files/documents/1866/USAID%20DRG_%20final%20final%206-24%203%20(1).pdf) (last visited Aug. 25, 2015) [hereinafter USAID STRATEGY]. The report, among other things, also cautions against premature evaluations, since “changes in some [Democracy, Human Rights and Governance] DRG outcomes often occur incrementally, requiring longer timelines for evaluation to avoid missing the impact of incremental but effective DRG programs, or prematurely assessing programs that initially show progress but are ultimately ineffective.” *Id.* at 34; *see also* USAID STRATEGY’s definition of impact evaluation:

Impact evaluations measure the change in a development outcome that is attributable to a defined intervention. They are based on models of cause and effect and require a credible and rigorously defined counterfactual to control for factors other than the intervention that might account for the observed change. Impact evaluations in which comparisons are made between beneficiaries that are randomly assigned to either a treatment or to a control group provide the strongest evidence.

*Id.* at 34 n.39. USAID STRATEGY was produced by a “Policy Task Team,” which also includes “six other individuals selected from across the Agency for their recognized knowledge and expertise” on the issues. *Id.* at 3; *see also* 2012 USAID Policy, *supra* note 16, at 5–6 (USAID commits itself to improved practices for evaluating counter-trafficking activities.). Further research and analysis are required to determine whether the commitments to better evaluation are being carried out, and if so, where and to what effect. For commentary on such policy statements (but not involving USAID) committing to better practices, *see* Deaton, *supra* note 3 at 314-15, *et seq.* (comparing effectiveness of multinational 2005 Paris declaration on principles of better aid to an ineffective New Year’s resolution). *See* The Paris Declaration on Aid Effectiveness (2005) OECD, *available at* <http://www.oecd.org/dac/effectiveness/34428351.pdf> (last visited Aug. 25, 2015); *see also* COMMITTEE ON EVALUATION OF USAID DEMOCRACY ASSISTANCE PROGRAMS, NATIONAL RESEARCH COUNCIL, IMPROVING DEMOCRACY ASSISTANCE: BUILDING KNOWLEDGE THROUGH EVALUATIONS AND RESEARCH, at vii (2008) [hereinafter IMPROVING DEMOCRACY ASSISTANCE] (report on how best to evaluate USAID’s democracy and governance (DG) programs); *see id.* at 1 (“Despite these substantial expenditures [by USAID], our understanding of the actual impacts of USAID DG assistance on progress toward democracy remains limited—and is the subject of much current debate in the policy and scholarly communities.”); *id.* at 30 (referencing goal of evaluation practices “is to determine, not merely what happened following a given assistance program, but how much what happened differs from what would be observed in the absence of that program.”) (italics in original); *see also id.* at 6 (“An impact evaluation aims to separate the effects of a specific DG project from the vast range of other factors affecting the progress of democracy in a given country and thus to make the most precise and credible determination of how much DG projects contribute to desired outcomes.”) (italics in original). IMPROVING DEMOCRACY ASSISTANCE also observes that it is unclear whether the promotion of democracy furthers desired policy goals at all but notes that the subject is outside the scope of its report. *See id.* at 19, stating:

Behind efforts to support the spread of democracy promotion lies the belief that increasing democracy in developing nations will promote economic growth, diminish the risks of terrorism, and reduce the frequency of internal and international conflicts. Whether or not democracy actually has all of these effects, and under what conditions, is far from certain. As discussed further, there is a substantial academic and policy debate on the merits of promoting democratic transitions [citations omitted] . . . . This debate is far beyond the scope of this report . . . .

For a different observation on the problem of the lack of evaluation in the field of humanitarian assistance and the implications of proceeding in the face of inadequate evaluation, *see* William Easterly, *Measuring How and Why Aid Works—or Doesn’t*, THE WALL ST. J. (Apr. 30, 2011), <http://on.wsj.com/kSI6GP> (last visited Aug. 25,

## VI. THE WAY FORWARD

Even if the best approaches to counter-trafficking are unclear (in light of missing or uncertain data or evaluations), government agencies and others will presumably move forward, preferably with innovative counter-trafficking approaches,<sup>28</sup> and greater resources, to further the effort, doing the best that they can do with what they have and what they know.<sup>29</sup> To quote a

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2015). In this book review of two books on development economics (BANERJEE & DUFLO, *supra* note 13) and KARLAN & APPEL, *supra* note 17), Professor Easterly noted that humanitarian aid effectiveness is insufficiently evaluated, if evaluated at all, and usually is “flying blind,” stating:

The books’ single [sic] achievement is in addressing two disgraceful problems that beset humanitarian aid. The first is that the effectiveness of aid is often not evaluated at all; the second is that even when aid is evaluated, the methods are often dubious, such as before-and-after analysis that doesn't take into account variables that have nothing to do with the aid itself. Humanitarian aid is usually flying blind. *See also* Easterly, *supra* note 27 (“[The authors] have fought to establish a beachhead of honesty and rigor about evidence, evaluation and complexity in an aid world that would prefer to stick to glossy brochures and celebrity photo-ops. For this they deserve to be congratulated—and to be read.”). Professor Easterly has observed elsewhere that “rich-country politicians [should] realize that a negative evaluation of a particular aid effort is a learning opportunity, not an excuse to cut foreign aid.” WILLIAM EASTERLY, *THE WHITE MAN’S BURDEN: WHY THE WEST’S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* 376 (Reprint ed. 2006); *see also* KARLAN & APPEL, *supra* note 17, at 28 (“Until very recently, with virtually no hard evidence to guide us in choosing which tools to use in the fight against poverty, we were flying blind.”). “To make a difference in the fight against poverty, we need more than good intentions, more than what sounds good, and more than what looks good anecdotally. The answer isn’t always what we want it to be, and frankly that does not matter.” *Id.* at 276.

<sup>28</sup> *See* KARLAN & APPEL, *supra* note 17, at 271 on the importance of innovation and taking risks in the foreign aid context, as follows:

Finally, funding should not be confined exclusively to “proven” (or even “being proven”) ideas. We do need to take risks . . . . [T]here is always a need for creativity, for trying brand-new and unproven tactics. Organizations that innovate—and innovate thoughtfully, testing their new ideas rigorously—also deserve our support. That said, innovation without evaluation does not help the world as much as innovation with evaluation.

*See also* HAUGEN & BOUTROS, *THE LOCUST EFFECT: WHY THE END OF POVERTY REQUIRES THE END OF VIOLENCE* (Oxford University Press 2014) at 241, likewise supporting experimental programs when unsure precisely what to do when addressing nonfunctioning criminal justice systems in the developing world:

The problem of broken criminal justice systems in the developing world is too massive and deep to address everywhere at once. Moreover, we don’t even know exactly what to do. So wisdom suggests that we pick some places in the world where we can pursue targeted, experimental projects that relentlessly push through in transforming a targeted dysfunctional justice system into one that actually protects the poor from violence.

<sup>29</sup> Working for social betterment in a climate of uncertain results and doubtful evaluation and data is not unique to counter-trafficking. In *THE IDEALIST*, author Nina Munk quotes economist Jeffrey Sachs on his experiment to end extreme poverty using his “Millennium Villages Project as a laboratory to test his theories and to prove that his series of ‘interventions’ could transform the lives of the world’s poorest people,” as follows: “You can have a firm conviction even in an uncertain world—it’s the best you can do actually—and that is the nature of my conviction . . . . I don’t feel it’s worth asking if this is the best of the best—it’s the best we can do with what we have.” NINA

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former USAID administrator, rather than certainty, “[g]ood development practice requires experimentation, risk taking and innovation.”<sup>30</sup> According to another commentator, in a recent article on evaluation of development programs, progress need not follow a straight line but may rather take a circuitous route (using sailboat rather than train imagery), particularly when political or social change is required for reform; and this may require different perspectives on evaluation.<sup>31</sup> Finally, while difficulties in measurement are relevant (and have been the subject of

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MUNK, *THE IDEALIST: JEFFREY SACHS AND THE QUEST TO END POVERTY* 232 (Doubleday 2013); *see also id.* at 36, stating that:

“How do you know what would have happened without the aid?” asks the development economist Esther Duflo. “Maybe it would have been much worse. Or maybe it would have been better. We have no idea.” “We’re not any better than the medieval doctors and their leeches,” Duflo continues, comparing leeches to theories promoted by development economists. “Sometimes the patient gets better. Sometimes the patient dies. Is it the leeches? Is it something else? We don’t know.”

*See also* KARLAN & APPEL, *supra* note 17, at 29, stating to the same effect:

The sad fact is that much of the work being done around the world to fight poverty is in a sense like bloodletting. There is a wealth of conviction and some agreement about the driving principles—people are in need, and we should provide them with *something* to help—but that’s about the extent of it. The process of systematic testing, and the corresponding refinement of methods and treatments is just beginning.

(Italics in original); *see also* BANERJEE & DUFLO, *supra* note 13, at xi (referencing fighting global poverty: “Above all, [the book] makes clear why hope is vital and knowledge critical, why we have to keep on trying even when the challenge looks overwhelming. Success isn’t always as far away as it looks.”). To the same effect, *see* HAUGEN & BOUTROS, *supra* note 28, at 264, noting that remedial efforts should go forward in the face of uncertainty:

We have come to see with some urgency that criminal justice systems are indispensable for the poor, and we know from history that it’s possible to build them. But we also know that building them is difficult, costly, dangerous, and unlikely. What we need, therefore, are bold projects of hope: projects of transformation that bring real change, that teach us, and that inspire hope—because the vulnerable poor need all three . . . . From these projects we learn what we didn’t previously know about the problem, and what seems to help and what does not.

<sup>30</sup> *See* Natsios, *supra* note 1, at 35.

<sup>31</sup> Rachel Kleinfeld, *Improving Development Aid Design and Evaluation: Plan for Sailboats, Not Trains*. Carnegie Endowment for International Peace, Mar. 2, 2015, available at [http://carnegieendowment.org/files/devt\\_design\\_implementation.pdf](http://carnegieendowment.org/files/devt_design_implementation.pdf). To the extent that political or social reforms are required in counter-trafficking, one might anticipate longer time frames for evaluation and non-linear progress. To use Rachel Kleinfeld’s literary imagery, progress would need to be viewed in terms of a sailboat (non-linear) rather than a train (linear). *See id.* at 14:

Most evaluation systems are set to measure the equivalent of a train progressing down a track: a straight line that starts a little slowly and then gains speed, with clear checkpoints along the path that should be hit at specified times. Social and political reform looks like a sailboat tacking toward its destination, sometimes over the course of fifty years. Like Odysseus’s famous journey home, it entails odd bedfellows, unexpected diversions, eddies of inaction, and moments of opportunity to surge forward.

*See also id.* at 45:

ongoing dialogue throughout the foreign assistance “community”), a balance should be struck between emphasizing what can be readily counted and innovative approaches to the counter-trafficking effort.<sup>32</sup>

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[D]onor projects that are chosen because they can be easily measured can be actively detrimental. ...In all these cases, the selection of programs that could be finished quickly and easily and then linearly measured by outputs (buildings built, equipment provided, trainings offered), rather than harder-to-measure factors, yielded efforts that backfired in their ultimate goals. Many of the practitioners involved knew this would happen. But they were stuck within a system that wanted projects that could be measured in easy-to-show, numerical formats, for political leaders demanding progress in six months.

*See also infra* various references to too short evaluation periods and time horizons.

Evaluating Ms. Kleinfeld's theories and conclusions from the perspective of bilateral or multi-lateral agencies or of persons “in the field” is beyond the scope of this article.

<sup>32</sup> For an account of the problems of over-emphasizing the importance of measurability in development, *see also* Shaikh, *supra* note 11:

Now we come to the hard questions:

If we limit all of our development projects to those that have easy metrics for success, we lose a lot of programs, many of which support important things like rule of law. Of course, if they don't have useful metrics, how do we know those programs are supporting the important goals?

And how meaningful is impact evaluation anyway when you consider the short time frames we're working with? Most development programs take ten years or more to show real impact. How are we supposed to bring that in line with government funding cycles?

On the other hand, we don't have a lot of alternatives to impact evaluation. Impact is not unimportant just because it's hard to quantify at times. We can't wish that away. Plenty of beautifully designed and carefully implemented projects turned out not to have any effect at all. For example, consider what we've learned from microfinance impact evaluations. Microloans have a positive effect but not the one we expected.

It's a standard trope of this blog to point out that there's no panacea in global development. That's true of impact evaluation, too. It's a tool for identifying worthwhile development efforts, but it is not the only tool. We can't go back to assuming that good intentions lead to good results, but there must be room for judgment and experience in with the quantifiable data.

International human trafficking has been identified as a development problem. *See* 2012 USAID FIELD GUIDE, *supra* note 17, at 58 (“[l]ack of economic alternatives makes people vulnerable to all forms of trafficking”); *but cf. id.* at 40 (“[p]overty alone does not necessarily create vulnerability to trafficking, but when combined with other factors (such as civil unrest), these can lead to higher risk for being trafficked.”); *see also* 2012 USAID Policy, *supra* note 16, at 1 (“trafficking in persons . . . is a massive development problem”). *See also* Norman L. Greene and Eric Beinhart, *Combating Human Trafficking -- The U.S. Government's Response: A Panel and A Perspective on*

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### CONCLUSION

Based on the symposium panel as well as much other development literature, the emphasis on improving and expanding monitoring and evaluation is a positive trend and is unlikely to recede. But calls for improved monitoring and evaluation must be realistic and pragmatic.<sup>33</sup> As the former USAID administrator cautions, focusing solely on what is readily measurable may have the effect of leading to underfunding or avoiding important or “transformational” programs where measurement is difficult.<sup>34</sup> “Essentially, measurability should not be confused with development significance.”<sup>35</sup> What might be least important might be readily measurable and, by way of contrast, what is most important might be hard to measure. Policymakers should consider whether too sharp a focus on what might be measured may lead to spending on less rather than more important programs.<sup>36</sup>

Moreover, it has been observed that “[t]he time horizon for measurement is also a problem: institution-building programs cannot prove they are sustainable until after the aid program has ended and funding has been cut off,”<sup>37</sup> which has been termed by the former

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*Counter-Trafficking in Persons*, 20 ILSA J. INT’L & COMP. L. 49 (2013). For overall ways to improve foreign assistance, a subject beyond the scope of but relevant to the program and this article, see generally also DEATON, *supra* note 3; cf. critical commentary on the book cited in this article, *supra* note 13.

<sup>33</sup> Although the panel did not focus on the differences in monitoring and evaluation in conflict as opposed to non-conflict zones, see Andrew Blum, *The Peace Bridge to Nowhere*, available at <http://foreignpolicy.com/2014/09/22/the-peace-bridge-to-nowhere/> (last visited Aug. 25, 2015) (“Still, the need for accountability won’t change -- working in challenging places cannot mean that organizations get a pass for not doing the job. But the way that success is measured and applied needs to evolve.”).

<sup>34</sup> Whether there are transformational development programs and what they consist of in particular contexts is beyond the scope of this article.

<sup>35</sup> See Natsios, *supra* note 1, at 7 (“Development officers focus on what they can measure because the counter-bureaucracy demands it.”) See also *id.* at 41 (“When the OMD shuts down transformational development programs that build institutions and encourage policy reform because they cannot produce quantitative results in some quarterly reporting system, the oversight system has become dysfunctional.”) OMD represents the author’s acronym for “Washington’s Obsessive Measurement Disorder.” *Id.* at 15. The emphasis on meaningless measurements is reminiscent of the characterization of some urban planning in Jane Jacobs, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES*, p. 13 (1961) (“As in the pseudoscience of bloodletting, just so in the pseudoscience of city rebuilding and planning, years of learning and a plethora of subtle and complicated dogma have arisen on a foundation of nonsense.”)

The situation depicted in Prof. Natsios’ article has been described as “goal displacement” where the substantive goal of the institution is subordinated to the formalistic goals of the counter-bureaucracy. See Cate Rogers, *USAID: Obsessive Measurement Disorder?* DEVPOLICYBLOG, Nov. 22, 2010, available at <http://devpolicy.org/usaids-obsessive-measurement-disorder-20101122/> (last visited Aug. 25, 2015) (“First described by Robert Merton in 1957, goal displacement occurs when formalistic goals become more important than the substantive goal of the organization. In the case of USAID, the goals are largely set by the counter-bureaucracy and do not reflect development goals of the partner country or of the ultimate recipients of US aid. It is this fact that leads Natsios to claim that the counter-bureaucracy is now so dominant that it has become the main customer of US aid.”) Of course, if the results of a program are not readily measurable, how does one know whether it is a good program? Shaikh, *supra* note 11.

<sup>36</sup> See Natsios, *supra*, note 1, at 8 (“Rule of law and good governance programs, which are much more difficult to observe or measure (particularly over the short term) and are therefore chronically underfunded at USAID”). This should not mean, of course, that hard to measure programs are necessarily better programs; rather, the point is that the fact that they are hard to measure should not mean that they are not worth doing.

<sup>37</sup> See *id.*

administrator as a “time lag affect.”<sup>38</sup> This observation is important in determining when to assess counter-trafficking programs as well since they also may be long-term and take time to show results; and if it is borne out, policymakers and development professionals should take this into account in their decision-making process. Adequate funds should also be allotted for any improved evaluation effort to avoid empty calls for evaluation when insufficient funds are available.

Prof. Bouché correctly cautioned against defeatist attitudes in the field of monitoring and evaluation (for instance, believing that doing the necessary evaluations are impossible) and concluded that it is better to adopt a positive attitude and try to achieve what is possible. (This may be a virtue in development assistance overall.)<sup>39</sup> She also specifically noted that programs to curb the demand for trafficking victims are new, and if and when they become more prominent, they will present new opportunities for effective counter-trafficking evaluations. However, there is nothing inconsistent between avoiding defeatist attitudes and searching for realistic and pragmatic solutions.

In conclusion, the law school and symposium organizers deserve credit for highlighting the subject of monitoring and evaluating counter-trafficking programs and for bringing distinguished counter-trafficking and development professionals together to discuss it. This was a multi-disciplinary panel, but counter-trafficking requires the assistance of many talents and professions and does not respect the boundaries between academic disciplines.

The purpose of the event was to raise relevant and thought-provoking issues and spark further discussion and research in the fields of counter-trafficking and effective foreign assistance generally, both in the legal and policy communities and beyond. The organizers hope that it will encourage the attendees and readers of this article to engage in and advance these subjects affecting the well-being of millions.

#### EPILOGUE

Part of the symposium focused on the subject of what lawyers do in counter-trafficking. The topic was selected in light of the law school setting and students in the audience. In that context, the question of “what may I do as an attorney to assist in counter-trafficking” is never far from the surface. This epilogue will touch on the aspects of the subject of what lawyers are doing and can do relating to USAID. To begin, USAID, as a development agency, focuses on the development aspects of counter-trafficking. As noted in the 2012 USAID Policy, trafficking flourishes where development is poor, namely, where there is weak rule of law, gender discrimination, lack of education and jobs, and lack of a social welfare safety net. By their very nature, and viewed in that light, effective development policies can be effective counter-trafficking.

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<sup>38</sup> See *id.* at 8-9 (referencing a study of USAID democracy and governance [DG] programs, noting “It is interesting to note that the study found that there were significant ‘lagged effects’ for DG obligations, meaning that DG programs often take several years to ‘mature’ and show results after funding has ended....This suggests that trying to measure results while the program is going on may not be particularly useful, because those results often show up after the program has been completed—what I would call a time lag affect.”).

<sup>39</sup> Cf. DEATON, *supra* note 3.



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Lawyers involved in USAID's counter-trafficking efforts, for example, draft and enforce rules and regulations and policies; train staff (both in Washington, D.C. and in the USAID missions) on their obligations to comply with rules and regulations which bar conduct which encourages trafficking (e.g., commercial sex); and help field staff in missions in the developing world design, manage and evaluate programs. As an USAID publication notes, "The [USAID Office of General Counsel] shall provide advice and assistance to USAID personnel on all TIP [trafficking in persons] legal matters, including reviewing and coordinating on all proposed TIP policies, regulations, directives, and instructions, and on all proposed exceptions to USAID C-TIP policy."<sup>40</sup>

The organizers hope that the program has provided useful information on career choices to the attendees and others through inspiring examples of what attorneys in particular contexts have done to address the trafficking problem.<sup>41</sup> They are grateful to their panelists for not only their sophisticated presentations but also for their service as role models for students who might consider becoming counter-trafficking attorneys themselves.

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<sup>40</sup> USAID, *Guidance on the Implementation of Agency-Wide Counter Trafficking in Persons Code of Conduct*, available at [http://pdf.usaid.gov/pdf\\_docs/Pdact175.pdf](http://pdf.usaid.gov/pdf_docs/Pdact175.pdf) (last visited Aug. 25, 2015). See also 2012 USAID POLICY, *supra* note 16, at 9 ("Guidance on the Implementation of Agency-Wide Counter Trafficking in Persons Code of Conduct," referencing role of USAID General Counsel, as follows:

USAID, led by DCHA, together with the Office of the General Counsel and the relevant Regional Bureaus and other Offices, will take a number of steps to increase accountability for this Policy.")

See also *Inspector General Report*, *supra* note 16 at 6 ("The code of conduct's implementing guidance delegates responsibility for training Agency staff on the code's requirements to the Office of General Counsel and regional legal advisors, who were instructed to cover human trafficking in annual ethics training.")

<sup>41</sup> Many of the examples of what attorneys have done in counter-trafficking were covered in the first panel of the symposium which is not addressed in this article. The author was the moderator of the first panel, which included Veronica Zeitlin as a panelist in addition to moderating this second panel; Judge Pamela Chin of the U.S. District Court for the Eastern District of New York; Barry Koch of Western Union; Katy Mastman of the U.S. Department of Labor; and Sam McCahon of the McCahon Law Firm.

## SYMPOSIUM PANELISTS (PANEL 2)

**Vanessa Bouché**

Dr. Vanessa Bouché is Assistant Professor of Political Science at Texas Christian University. She is currently the co-PI on three federally-funded grants on human trafficking. Dr. Bouché has published articles on the role of female legislative leadership in passing human trafficking laws and the factors leading to comprehensive state trafficking laws. She has been engaged in community efforts to combat human trafficking at all levels of government and provides research and methodological consultation to a variety of organizations.

**Marisa Ferri**

Marisa Ferri is the Chief, Asia/MENA/Europe Division Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor. At the time of the symposium, she was the Deputy Senior Coordinator for International Programs in the Office to Monitor and Combat Trafficking in Persons at the U.S. Department of State, where she was responsible for coordinating the TIP Office's foreign assistance to prevent trafficking, protect trafficking victims, and prosecute traffickers throughout the world.

**Ruchira Gupta**

Ruchira Gupta is the Founder and President of Apne Aap Women Worldwide – a grassroots organization in India working to end sex trafficking by increasing choices for at-risk girls and women. She has striven over her 25 year career to highlight the link between trafficking and prostitution laws, and to lobby policy makers to shift blame from victims to perpetrators. In 2009 Gupta won the Clinton Global Citizen Award and in 2007, she won the Abolitionist Award at the UK House of Lords. In 2008 and 2009, Gupta addressed the UN General Assembly on human trafficking. She won an Emmy in 1997 for her work on the documentary, *THE SELLING OF INNOCENTS*, which inspired the creation of Apne Aap. Her work has been featured in 11 books including *HALF THE SKY* by Sheryl WuDunn and Nicholas Kristof. Prior to founding Apne Aap, Gupta worked in the United Nations in various capacities in 12 countries for over ten years.

**Veronica Zeitlin (Moderator)**

Veronica Zeitlin is a Counter-Trafficking and Gender Adviser in USAID's Center of Excellence for Democracy, Human Rights, and Governance. Highlights of her counter-trafficking in persons (C-TIP) work at USAID include: coordinating the development of the Agency's C-TIP Policy, which was launched at the White House in February 2012, managing the C-TIP Campus Challenge, an initiative to raise awareness and inspire activism to combat trafficking on university campuses around the world, providing technical assistance to USAID missions to design, manage, and evaluate counter-trafficking field programming, and developing and conducting Agency-wide C-TIP training.